



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation, and Team Spirit.

REVISION: This revised directive supersedes TSA MD 300.13, *Acquisition Using Other Than Full and Open Competition*, dated October 28, 2008.

SUMMARY OF CHANGES: This revision removes the TSA Deputy Administrator as an approving authority for Justification and Approval documents.

1. **PURPOSE:** This directive provides TSA policy and procedures for using other than full and open competition (e.g., sole source, purchase of brand-name products, limited competition, etc.) when contracting for construction greater than \$2,000; services greater than \$2,500; and supplies greater than \$3,000.
2. **SCOPE:** This directive applies to all TSA organizational elements.
3. **AUTHORITIES:**
 - A. Competition in Contracting Act (1984) (41 U.S.C. § 253)
 - B. [Federal Acquisition Regulation \(FAR\)](#) (Part 6 – Competition Requirements; Part 5 – Synopsis)
 - C. [Homeland Security Acquisition Regulation](#) (HSAR) 3006.3
 - D. [Homeland Security Acquisition Manual](#) (HSAM) 3006.3
4. **DEFINITIONS:**
 - A. Competition Advocate: The individual designated by TSA to promote the acquisition of commercial items and full and open competition. The Competition Advocate approves Justifications & Approval (J&A) over \$550,000 for other than full and open competition and performs the duties and responsibilities assigned under FAR Part 6.502. TSA's Competition Advocate is the Executive Director for Program Analysis and Acquisition Support, located within the Office of Acquisition.
 - B. Market Research: The collection and analysis of information about capabilities within the market to satisfy agency needs in accordance with FAR Part 10. It may include, but is not limited to, identifying market trends, contacting knowledgeable individuals in government and industry, reviewing the results of recent market research, publishing formal requests for information, querying the government-wide database of contracts intended for use by multiple agencies available at www.ContractDirectory.gov, engaging industry in interactive communication, and reviewing generally available product literature provided by vendors.
 - C. Full and Open Competition: A procurement in which all responsible sources are permitted to compete for a contract. Full and open competition is required by statute unless an exception applies.

- D. Other Than Full and Open Competition: A method of soliciting without providing for full and open competition. There are seven statutory authorities that permit contracting without providing for full and open competition, as specified in FAR Part 6.3.
- E. Head of the Contracting Activity (HCA): The official who has overall responsibility for managing the contracting activity. At TSA, the HCA is the Assistant Administrator for Acquisition.
- F. Integrated Product Team (IPT): Team composed of representatives from appropriate functional disciplines working together to build successful programs, identify and resolve issues, and make sound and timely recommendations to facilitate decision making. An IPT includes the contracting officer and may include members from both government and industry after contract award.

5. RESPONSIBILITIES:

- A. Assistant Administrators and equivalents are responsible for:
 - (1) Promoting a competitive environment in his or her organization, including ensuring procurement integrity, and
 - (2) Reviewing and concurring with J&A actions requesting other than full and open competition for requirements greater than \$11,500,000.
- B. Program managers are responsible for:
 - (1) Promoting a competitive acquisition environment by clearly articulating TSA requirements,
 - (2) Conducting meaningful market research,
 - (3) Ensuring procurement integrity,
 - (4) Using full and open competition for contracts unless one of the statutory exceptions to full and open competition is applicable and is appropriately documented and approved, and
 - (5) Preparing and concurring with J&A actions for other than full and open competition.
- C. Contracting Officers are responsible for:
 - (1) Safeguarding and leading the competitive process and facilitating communications with industry,
 - (2) Promoting and providing for full and open competition in soliciting offers and awarding Government contracts,
 - (3) Ensuring the integrity of the procurement process,

- (4) Assisting with the preparation and approval of J&As for actions requiring other than full and open competition, and
- (5) Facilitating the execution of all required signatures on the J&A before solicitation release.

D. Competition Advocate is responsible for:

- (1) Promoting the acquisition of commercial items and full and open competition; challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics; and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses,
- (2) Reviewing and approving J&A documents for other than full and open competition requirements greater than \$550,000, and
- (3) Providing an annual review of TSA's competitive environment including trend analysis and recommendations for improvements to the DHS Chief Procurement Officer.

E. Office of Chief Counsel (OCC) is responsible for:

- (1) Reviewing all J&As greater than \$100,000 for legal sufficiency, after review by the responsible Contracting Officer and Program Manager and prior to execution by the approving official, and
- (2) Providing advice throughout the procurement process, including a legal sufficiency review of documentation in support of the award.

6. POLICY:

- A. This directive applies to all TSA solicitations released June 23, 2008 or later. Effective June 23, 2008, TSA cannot issue single source justifications based on the Acquisition Management System (AMS). If you have any questions, consult with the contracting officer, TSA Acquisition Policy Office, and TSA Office of Chief Counsel, Procurement Law Division.
- B. Unless authorized by one of the seven statutory authorities in FAR Part 6.3, full and open competition shall be used for TSA contracts. This directive does not apply to small business set-asides pursuant to FAR Part 6.2.
- C. Contracting Officers shall provide for full and open competition through use of the competitive procedures that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently.
- D. When a statutory exception applies (see FAR Part 6.302), Program Managers and Contracting Officers shall work together to prepare [TSA Form 301, Justification and Approval](#) and obtain approval of a J&A. Lack of advanced planning and concerns related to the amount of funds available (such as expiring funds) are not considered justification for other than full and open

competition. The exceptions for use of other than full and open competition are found in FAR Part 6, with supplementary guidance set forth at HSAR Part 3006, and HSAM Part 3006.

- 7. PROCEDURES:** In addition to this directive, procedures for use of other than full and open competition are found in FAR Part 6, HSAR Part 3006, and HSAM Part 3006 and FAR Part 8.405-6 (Limited sources justification and approval).
- A. Contract Requirements: The Program Manager, with input from an Integrated Product Team, prepares the contract requirements.
 - B. Conduct Market Research: The Program Manager conducts market research in accordance with FAR Part 10.
 - C. Justification and Approval for Other Than Full and Open Competition (including brand name): Prepare J&A to support an exception to full and open competition based on an authority in FAR Part 6. The Program Manager collaborates with the Contracting Officer to prepare a J&A. The J&A shall contain sufficient facts and rationale to justify the use of the specific authority cited and shall be approved in accordance with FAR 6.304.
 - D. Use of Brand Name Descriptions:
 - (1) FAR 6.302-1(c) states that an acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It must be justified and approved in accordance with FAR 6.303 and 6.304.
 - (2) Prior to placing orders for a Brand Named specified item from Federal Supply Schedules, the contracting officer must document and justify the use of Brand Name as prescribed in FAR 8.405-6(a)(2).
 - E. Publicizing Proposed Other Than Full and Open Competition Contract Actions: As prescribed by FAR Part 5, the Contracting Officers must publicize the agency's proposed action to limit competition in FedBizOpps prior to preparation of a J&A document. Any prepared J&A document then must describe the specific FedBizOpps posting, describe each response received from the posting, and explain why the responses do not satisfy the government's requirements with the consequent result of continuing the pursuit of an other than full and open competition.
 - F. Sole Source Justification for Simplified Acquisitions: FAR 13.501 prescribes the documentation required for sole sources justifications for simplified acquisitions.
 - G. Concurrence/Approval Thresholds for J&A: The Program Manager and Contracting Officer obtain concurrence and approval of the J&A in accordance with the *Approval/Concurrence Thresholds for J&A*. (**Attachment**) For approval thresholds greater than \$100,000, each listed Approval Authority must execute the document prior to its submittal to the ultimate Approval Authority.

H. Report Actions: The Contracting Officer ensures the signed and dated J&A is included in the contract file. The Contracting Officer also ensures competition information is accurately and timely entered into Federal Procurement Database System (FPDS) and the Office of Acquisition competition database. The Contracting Officer will also provide for public disclosure of J&As as required by FAR and DHS policy.

I. For additional guidance on the topics discussed herein, please contact your contracting officer or TSAProcurementPolicy@dhs.gov.

8. EFFECTIVE DATE AND IMPLEMENTATION: This directive is effective immediately upon signature.

APPROVAL

Signed

5/11/2009

Domenico Cipicchio
Assistant Administrator for Acquisition

Date

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Concurrence/Approval Thresholds for J&A

Estimated Value of the Requirement	Program Concurrence/Legal (Procurement Law Attorney) Review	Acquisition Official Approval of Written Justification*
Between: \$2,000 - \$100,000 for construction; \$2,500 - \$100,000 for services; \$3,000 - \$100,000 for supplies	<ul style="list-style-type: none"> ▶ Cognizant Program Manager 	<ul style="list-style-type: none"> ▶ Cognizant Contracting Officer
\$100,001 - \$550,000	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager 	<ul style="list-style-type: none"> ▶ Cognizant Contracting Officer and ▶ Acquisition Office Division Director
\$550,001 - \$5,000,000	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager 	<ul style="list-style-type: none"> ▶ Cognizant Contracting Officer and ▶ Acquisition Office Division Director and ▶ Competition Advocate
\$5,000,001-\$11,500,000	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager 	<ul style="list-style-type: none"> ▶ Cognizant Contracting Officer and ▶ Acquisition Office Division Director and ▶ Competition Advocate and ▶ Deputy Assistant Administrator for Acquisition
\$11,500,001 – \$57,000,000	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager ▶ Cognizant Assistant Administrator 	<ul style="list-style-type: none"> ▶ Head of Contracting Activity and ▶ all Officials listed above
\$57,000,001 and up**	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager ▶ Cognizant Assistant Administrator 	<ul style="list-style-type: none"> ▶ DHS Chief Procurement Officer and all Officials listed above
Response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days (See HSAM 3006.302-2)**	<ul style="list-style-type: none"> ▶ Legal/Cognizant Program Manager ▶ Cognizant Assistant Administrator ▶ 	<ul style="list-style-type: none"> ▶ Head of Contracting Activity (for actions estimated at \$10,000 - \$57,000,000) ▶ DHS Chief Procurement Officer (for actions estimated at more than \$57,000,000) ▶ All Officials listed above

* When the Contracting Officer is the Acquisition Division Director, the J&A shall be approved by the Deputy Assistant Administrator for Acquisition.

** For acquisitions greater than \$57,000,000, the concurrence of the TSA Deputy Administrator will be obtained via TSA Form 5000, TSA Clearance Sheet.